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THE
PLEADER'S GUIDE,
A DIDACTIC POEM,
IN TWO BOOKS,

CONTAINING
THE CONDUCT OF A SUIT AT LAW,

With the Arguments of
COUNSELLOR BOTHER'UM,

AND
COUNSELLOR BORE'UM,

IN AN ACTION BETWIXT
JOHN-a-GULL, and JOHN-a-GUDGEON,

For ASSAULT AND BATTERY, at a late
Contested Election.

BY THE LATE
JOHN SURREBUTTER, Esq.
SPECIAL PLEADER, AND BARRISTER AT LAW.

by John Anstey

LONDON:

PRINTED FOR T. CADELL, JUN. AND W. DAVIES, (SUCCESSORS
TO MR. CADELL) IN THE STRAND.

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Entered at Stationer's Hall.

Rec. June 6, 1876

TO THE READER.

THE following production of the late ingenious MR. SURREBUTTER, Special Pleader, and Barrister at Law, is submitted to your perusal in the precise form in which it was found among the Author's Papers at his decease. The Poem is divided into two Books, each of which is subdivided into eight Parts, being the substance of a Course of Lectures originally intended for the use of his kinsman,

MR. JOB SURREBUTTER, to whom they are particularly addressed. An Explanation of the technical terms, and legal references, as they occur in the course of the work, are subjoined by your humble servant,

THE EDITOR.

SYLLABUS
OF
MR. SURREBUTTER'S
PROFESSIONAL LECTURES.

LECTURE I.

MR. SURREBUTTER proposes the Plan of his Lectures—His address to the Gentlemen of the Law, particularly to his kinsman MR. JOB SURREBUTTER—The Plan of Mr. Job's Education for the study of the Law commended—The superior advantages of his situation as a Special Pleader's Pupil.

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Of Process against Privileged Persons—Of the Distresses—Its Physical and Chemical Qualities. Process to Quash, and the Party's Appearance upon the Capias.

LECTURE VII.

An Epilogue, containing authentic Memoirs of Mr. SURREBUTTER a professional Career.

THE
PLEADER'S GUIDE.

BOOK I.

OF legal Fiction, Courts, and Offices,
Attorney's fees, and Costs & charges,
Of Suits & remedies, and when,
How to make, and be made,
Whether by Common Law, or Equity,
A man goes forward with the Law,
Things which are now done, and should be,
In short, of every thing that is to be done.

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THE
PLEADER'S GUIDE.

BOOK I.

LECTURE I.

MR. SURREBUTTER *proposes the plan of his lectures: his address to the Gentlemen of the Law, particularly to his kinsman, Mr. JOB SURREBUTTER—The plan of Mr. JOB's education for the study of the Law commended—The superior advantages of his situation as a Special Pleader's Pupil.*

OF legal Fictions, Quirks, and Glosses,
Attorney's gains, and Client's losses,
Of Suits created, lost, and won,
How to undo, and be undone,
Whether by COMMON LAW, or CIVIL
A man goes sooner to the Devil,
Things which few mortals can disclose
In Verse, or comprehend in Prose,

I sing—do thou, bright Phœbus, deign
 To shine for once in Chanc'ry-lane ;
 And, CLIO, if your pipe you'll lend
 To MERCURY, the Lawyer's friend,
 That ^a Usher of the golden Rod,
 Of Gain and Eloquence the God,
 Shall lead my steps with guidance sure,
 Safe through the ^b palpable obscure,
 And take my Parchments for his labour
 To cover your harmonious Tabor—

“PINDUS *to wit*,”—or where you chuse,—
 At Lincoln's Inn, or Arethuse,
 For Bards and Lawyers both with ease
 May place the ¹ *Venue* where they please;

^a ————— Virgâque levem coerces
 Aureâ turbam. HOR. Ode.

^b And through the palpable obscure find out
 His uncouth way. MILTON, b. ii. v. 405.

¹ *Venue* or *visne*, in Latin, *vicinetum*, is the neighbourhood in which the Declaration states the Cause of Action to have arisen, and is prefixed to the margin of every Declaration with a *Scilicet*, as “Pindus to wit” above.

² No matter where an Action's laid,
A Contract or a Poem made:
Is there a proud o'erbearing wight
Who tramples on his neighbour's right,
Superior in his own Opinion
To Lawyers, and the Law's Dominion?
Say what compulſive mode of action
Muſt give the injured ſatisfaction;
What forms, what fictions muſt combine
To make the parties ³ Iſſue join,

² *No matter where*—This muſt be underſtood of perſonal or tranſitory actions which relate to Goods and Chattels, as contradistinguished from local, which relate to Lands and Tenements: of the former claſs are all Actions of Covenant, Contract, Annuity, or Debt at large. For *debitum et contractus ſunt nullius loci*. 7 Co. 3. a. 2 In. 229. 23.

³ *Iſſue join*—Iſſue from the French *iſſuer*, i. e. *emanare*, to flow from. The word *iſſue* has various ſignifications in Law, it occurs here in its moſt general and received ſenſe
“ a ſingle certain and material point iſſuing out of the
“ Allegations and Pleas of the Plaintiff and Defendant,
“ conſiſting regularly upon an Affirmative and Negative
“ in a Cauſe to be tried by a Jury of twelve men.” 1 Inſt.

And better may enable those
Who draw their Pleas, or Briefs compose,
To hold the balance of success
With such precision and address,
That both the combat may sustain,
And neither the advantage gain,
But when 'tis o'er and judgment given
The scales may prove so just and even,
That each may venture to make oath
The Law's impartial to them both,
When both in rags their folly rue,
The Victor, and the Vanquish'd too.

Hear then, and deign to be my Readers,
Attorneys, Barristers, and Pleaders,
Shrieves, Justices, and Civil Doctors,
Surrogates, Delegates, and Proctors,
Grave Judges too, with smiles peruse
The fallies of a Lawyer's Muse,
A buxom Lass, who fain would make
Your sober sides with Laughter shake;
And, good my Lords, be kind and gracious,
And though You deem her contumacious,

Ne'er to the Fleet, or Bridewell fend her,
But spare a ludicrous offender,
Who longs to make your muscles play,
And give your Cheeks a holiday.

Hear me, ye Wits, and Critics too,
And learned * Dames in *Stocking blue*,
And you, ye Bards, my book who dip in,
In hopes to catch its Author tripping,
Some Mercy still, and Justice shew him,
And purchase ere you damn his Poem.

But, chiefly thou, dear Job, my Friend,
My Kinsman, to my Verse attend;
By Education form'd to shine
Conspicuous in the Pleading Line,
For you, from five years old to twenty,
Were cramm'd with Latin words in plenty,
Were bound apprentice to the Muses,
And forc'd with hard words, blows, and
bruises,
To labour on Poetic ground,
Dactyls and Spondees to confound,

* Κέκλυτέ μεν Τρῶες καὶ εὐκνήμιδες Ἀχαιοὶ. HOM.

And when become in Fictions wise,
In Pagan histories and lies,
Were sent to dive at Granta's cells,
For Truth in Dialectic wells,
There duly bound for four years more
To ply the Philosophic oar,
Points metaphysical to moot,
Chop Logic, wrangle, and dispute ;
And now, by far the most ambitious
Of all the sons of Bergerfdicius,
Present the Law with all the knowledge
You gather'd both at School and College,
Still bent on adding to your store
The Graces of a Pleader's lore ;
And, better to improve your taste,
Are by your Parent's fondness plac'd
Among the blest, the chosen few,
(Blest, ^d if their happiness they knew,)
Who for three hundred Guineas paid
To some great Master of the Trade,
Have, at his rooms, by *special* Favour,
His leave to use their best endeavour

^d Sua si bona no'rint.

VIRG.

By drawing Pleas, from nine till four,
 To earn him twice three hundred more,
 And, after dinner, may repair
 To *'foreſaid* rooms, and *then* and *there*
 Have *'foreſaid* leave, from five till ten,
 To draw th' *aforeſaid* Pleas again;
 While thus your bliſſful hours run on
 Till three improving years are gone,
 Permit me, with theſe rhymes, awhile,
 Your leiſure moments to beguile,
 And guide your bold advent'rous ways
 Safe through that wide and pathleſs maze
 Where Law and Cuſtom, Truth and Fiction,
 Craft, Juſtice, Strife, and Contradiſtion,
 With every bleſſing of Confuſion,
 Quirk, Error, Quibble, and Deluſion,
 Are all, if rightly underſtood,
 Conſpiring for the public Good,
 Like jarring Miniſters of State,
 'Mid Anger, Jealouſy, and Hate,
 In friendly COALITION join'd,
 To harmonize and bleſs mankind.



LECTURE II.

*Of the KING, and his Prerogative—Of the
CIVIL and MUNICIPAL administration of
public Justice, allegorically delineated and
compared.*

THE¹ KING, o'er ev'ry Cause supreme,
Be first the Prelude of my Theme,
In HIM, fans¹ *Laches* or² *Misfeasance*,
Resides ideal³ *Omnipresence*;

¹ Εκ Διὸς ἀρχώμεσθα. THEOC.

¹ *Laches*, in French, *Lachès*, signifies slackness or negligence; upon the presumption that the King is daily employed in the weighty affairs of Government, it is an established rule at *Common Law*, that no *Laches* shall be imputed to HIM, nor He any way suffer in his Interests, which are certain and permanent. *Bac.*

² *Misfeasance* signifies wrong doing; Lord C. J. Hale

HIM the just rights of Empire give
 For ever in his Courts to live ;
 No wasteful lapse of rolling years
 His just * Prerogative impairs ;
 E'en ³ Time that 's wont so swift to fly,
 Stands motionless with Majesty ;

says, the Law presumes the King will do no wrong, neither indeed can He do any wrong.

³ *Omnipresence*, or Ubiquity, is a consequence of the KING's prerogative—his Majesty, in the eye of the Law, is always present in all his Courts, although he cannot personally distribute Justice.

⁴ *Prerogative*, Lord Coke says, is so called, because “ though an Act has passed both houses of Parliament, yet “ before it will be a Law the Royal Assent must be *asked*, “ or *demanded*, and *obtained*” (as indeed the etymology seems to import) “ but that it legally extends to all powers, “ privileges, and pre-eminences, which the Law giveth “ to the Crown.” *Co. L.* 90.—But the most precise definition of *Prerogative*, is in *Finch*, *L.* 85. Prerogative, he says, is that Law in the case of the King, which is not Law in the case of a subject.

⁵ *Time*.—*Vigilantibus et non dormientibus jura subserviunt* is the Law in the case of the subject—*nullum Tempus occurrit regi* is the King's Plea. *Hob.* 347. The right of the King

How long soe'er a Cause is stay'd
 By ' Orders, Rules, and Motions made
 On Points by learned Counsel mooted,
 The KING can never be ' nonsuited.

was never defeated by any length of Time till the 21 *Jac.* 1. c. 2. and act 9 *Geo.* 3. c. 15. which was framed to amend the former and render it more effectual. The King's Liberties and Franchises are expressly excepted from the operation of these acts.

⁶ *Orders*.—Orders and Rules are obtained by Motion in Court, which is an occasional application to the Court by the parties, or their counsel, to obtain some Rule or Order which becomes necessary in the progress of the Cause, and is usually grounded on an *Affidavit*.

⁷ *Nonsuited*.—A *Nonsuit* is a dereliction or renunciation of the suit, by the Plaintiff, before Verdict given, and is thus effected. The Plaintiff, or his agent, when he is apprehensive of a Verdict against him, withdraws himself out of Court, whereupon the Crier is ordered to call the Plaintiff, and if he or his agent does not appear, he is nonsuited, and is said *non sequi clamorem suum*—as the King cannot withdraw himself out of Court, he cannot be nonsuited. “The King's Majesty cannot be nonsuit, because in judgment of Law he is ever present in all his Courts.” *Co. L.* 139.

From HIM who feels his ſubjects woes,
 The healing ſtream of * Juſtice flows;
 From HIM, derives its genuine ſource,
 Howe'er polluted in its courſe,
 Howe'er unpalatable made,
 Defil'd, perverted, or delay'd;
 Bleſt Fount! from you th' oppreſs'd and weak
 Eaſe to their cares and ſorrows ſeek;
 Where'er thy genial waters ſtray,
 Pride, Rapine, Fraud, and lawleſs Sway,
 Forbear the hallow'd ground to tread,
 While Truth by injur'd Virtue led
 With weeping Innocence attends,
 And proſtrate o'er thy current bends,
 To quaff the cup which bounteous Heaven
 To all impartially has given;
 But ſome amidſt the legal Throng
 Who think to them thy Streams belong,
 Like thoſe of Galen's learned Tribe
 Who ſome ſalubrious ſtream preſcribe,

* *Juſtice*—The King is the Fountain of Juſtice, and all Courts derive their authority from him. *Co. L.* 139.

But Chemicals and Drugs infuse,
 And all its healing powers abuse,
 Pain to their tortur'd Clients bring,
 And make thy pure and wholesome Spring
 Foul as the pools which devils mix
 At Chelt'nham, Harrogate, or Styx;
 And Law itself so rich is grown
 In terms and *nostrums* of its own,
 That e'en the Sages who expound
 Its truths and mysteries profound,
 (And none more learn'd, humane, and just
 Have e'er discharg'd their sacred trust)
 Are forc'd to cite opinions wise,
 * *Crok. Car. Crok. Jac. and Crok. Eliz.*
 And when some *recipe* they hit on
 In ¹⁰ Glanville, Bracton, Coke, or Britton,

⁹ *Crok. Car.*—Judge Croke's Reports are cited in the names of those princes in whose reigns the cases reported in his three volumes were determined, viz. Queen Elizabeth, King James, and King Charles I.

¹⁰ *Glanville, Bracton, &c.*—*Glanville* was Chief Justice in the reign of Hen. II. and wrote a book of Common Law, supposed to be the most ancient on the subject.

Their friendly succour interpose,
 And hold the Patient by the nose,
 With care administer the potion,
 Consult, and give him ease by *Motion*,
 And turn by tedious process quaint,
 Acute to Chronical complaint.
 Nor are there wanting who convey
 Their *Nostrums* in a Civil way,
 Doctors, who fond of consultations,
 Their Patients work with long quotations,
 And as the nature of the fact is,
 Torment them with a foreign practice;
 Pleas'd in mysterious Terms to speak,
 And cite some fav'rite *Empirique*,
 Some Quack, of note in days of yore,
 When Science from the Latian shore

Bracon wrote his Treatise in the reign of Henry III.

Sir *Ed. Coke* published his Institute and Commentary upon *Littleton* in the reign of James I.

Britton wrote his book in Edw. I.'s time by command of that king upon the model of *Justinian's* Institutions. *Stauford's Prerog.* 621.

To Albion came, and ^b Tibur's streams
 First join'd her social waves with Thames,
 'Twas then that fam'd Academician,
 That learned Monk and Politician,
 He who VACARIUS was call'd,
 The wise *élève* of ^a THEOBALD,
 And others by their Priests escorted,
 Those Books ² of choice receipts imported,

^b In Tiberim defluxit Orontes. JUVENAL.

^a *Theobald*.—Theobald, a Norman abbot, and archbishop of Canterbury, in the reign of King Stephen, introduced the Civil Law into England. Among others of his retinue he brought over with him *Roger*, surnamed *Vacarius*, whom he placed in the university of Oxford to teach it to the people of this country. *Blac. Com.*

² *Those books*.—A copy of the Pandects was discovered at *Amalfi* or *Amalfis*, a city of Apulia, in the following manner: Lotharius II. in the year 1137, being engaged in a war in behalf of Pope Innocent II. against Roger, King of Sicily and Naples, carried the city of Amalfi by storm, with 46 Pisan gallies: upon plundering the city a copy of Justinian's Pandects was found, and from thence conveyed to Pisa, and afterwards to Florence, where it was kept in the duke's palace, according to Selden, and is never brought forth but with torch-light and tokens of reverence.

Which at *Amalfi* lay conceal'd
Till by *LOTHARIO*'s arms reveal'd,
With theſe, their Fortunes to prefer,
They ſet up Shop at Weſtminſter ;
³ But of their practice were debarr'd
And fairly kick'd from Palace Yard,

³ *But of their practice*—The extraordinary riſe and eſtabliſhment of the Civil Law created a jealousy throughout all Europe. King Stephen iſſued a peremptory command preventing its propagation in England, and prohibiting Vacarius from reading Lectures at Oxford, and making it unlawful for any one to keep any of the books of the Roman Law by them. *Differt. ad Flet. c. 7.*

“The nobility at all times rejected the Civil Law with a degree of aſperity and ill humour—The Uſurper Stephen “whoſe intereſt it was to conciliate their affections, went “ſo far as to prohibit the ſtudy of it.” *De Lolme.*

Charles the Ninth and Henry the Third of France iſſued edicts to the ſame effect in France. In Spain it was made capital to offer or allege the Roman Law as compulſive and binding, vid. *Bodin de Repub. Lib. 1. cap. 8.* of the impolicy

Till thinking they had no intent
To hurt th' establish'd Government,
O'er-rule the Laws and ride the Land
With Romish edicts contraband,
The Nation, proud of the submission
Of men of birth and erudition,
Gave them a lodging, and in pity
Sent them to settle in the City,
Begg'd them to gather up their alls,
And vend their drugs behind St. Paul's—

Provided always that if e'er
Said Quack, or Quacks, should interfere,
Or any Quack, in word or deed
Presume his Province to exceed,

of advancing the Laws of Strangers in derogation of the
Municipal Laws of the country.

Fortescue, C. Justice of the King's Bench, and afterwards
Chancellor, carried his opposition to the Civil Law so far,
that he wrote a book intitled "*De Laudibus Legum Angliæ*,"
professedly with a view to demonstrate the superiority of
the English Laws over the Civil.

Or take upon him as a Scholar,

* PROHIBITORY WRIT ſhould follow :

Bleſt Writ ! by which their fees are ſtay'd,

And briefs into our bags convey'd !

A practice which muſt needs diſguſt 'em,

For as we thrive, they loſe their cuſtom ;

* *Prohibitory Writ*—Or Writ of Prohibition, is a Prerogative Writ iſſuing out of the King's Bench, and in ſome caſes, out of the Common Pleas, and the Chancery ; and is directed to any inferior Court, enjoining their proſecution of a Cauſe therein depending, upon a Suggeſtion that the cognizance thereof belongeth not to the Court.
F. N. B. 39.

This Writ is commonly granted upon motion, grounded on a Suggeſtion on Record, ſetting forth the nature of the complaint, and iſſues to enjoin the Counſel, Judge, and Register of the inferior Court not to proceed any further in the Cauſe in queſtion ; but in caſes of doubt or difficulty, the Party applying is directed by the Court to *declare in Prohibition*, that is, to commence an Action by filing a Declaration, ſtating a *fiction in Law*, viz. that the other party has actually proceeded in the Suit *below*, notwithstanding the writ. And the Queſtion as to the competency of the inferior Court being negatived upon Demurrer and Argument, the Prohibition to the inferior Court reſults as a conſequence of the Judgment.

But what they lose, or what they gain,
Has never yet disturb'd my brain:
Let others heed such broils and bustles
Who better can command their muscles;
Enough for me, when Client stands
With Purse and Parchment in his hands,
And claims my favour and protection,
To keep my Features in subjection;
Enough for me, with serious face
To puzzle and perplex his Case,
Then give his Purse a gentle squeeze,
And taste the flavour of his Fees,
His sweet Retainers, and Refreshers,
And leave these classical Professors
Mid barren fields of Roman lore
Their dreary journey to explore,
And lead through paths of fruitless science
Their comfortless bewilder'd Clients.

LECTURE III.

Comparison continued—Of the CIVIL LAW process—Excommunication—Serious Address to the Civilians, with certain weighty Interrogatories—Mr. SURREBUTTER's personal Superiority as a Common Lawyer—COUNSELLOR BOTHER'UM and COUNSELLOR BORE'UM proposed to MR. JOB SURREBUTTER as Models for his Imitation.

KNOW all to whom these presents come,
The ¹ Pandects of Imperial Rome,
And every ² Rescript and Opinion
Of ³ THEODOSIUS, or ⁴ JUSTINIAN, }
⁵ Of ULPIAN, PAULUS, or PAPINIAN, }

¹ *Pandects*—The Pandects, or Digests, are the writings of the ancient Civil Lawyers, systematically compiled by Justinian, and comprised in fifty books. Vid. *not. ante*.

² *Rescript*—The Rescripts of the Roman emperors were the Expositions and Constructions which they were pleased to make of their own Laws by way of answer and opinion to the Cases referred to them :

³ THEODOSIUS—A Code of CIVIL LAW was composed by order of the Emperor Theodosius the younger,

With Him who studied and profess'd 'em,
 And had the Stomach to digest 'em,
 Old * GOTHOFREDUS with a Corpus
 As fat and clumsy as a Porpus;
 Him too with all his *Galimatias*,
 Scaliger's Jewell, sage ' CUJACIUS,

and is still extant in sixteen books, containing a collection of the Imperial Constitutions, from Constantine, to his own Time. It received the Imperial sanction in the year 438. A. C.

* JUSTINIAN—Justinian published his Code about a century afterwards in the year 530, and has preserved the Rescripts of the preceding Emperors.

3 ULPIAN, PAULUS, &c.—The greatest part of this island was governed wholly by the Civil Law for about 300 years from Claudius to Honorius, during which time some of the most eminent Roman Lawyers, as Ulpian, Paulus, and Papinian, presided in the Courts of Justice of this country.

6 GOTHOFREDUS—Dionysius Gothofredus, an eminent Civilian, born at Paris in the year 1549, practised at Geneva in the year 1606, published in one large volume the whole body of the Civil Law or *Corpus Juris Civilis*.

7 CUJACIUS—*Ille Margarita Civilium*, &c. Vid. Scaligerian: the most eminent Civilian and most extraordinary

Though ſtill they keep their ancient ſtate,
 Their grandeur, dignity, and weight,
 And claim reſpect like veteran beaux,
 Or mountebanks in tarniſh'd clothes,
 Since * EDWARD from his ſubjects broke
 The bondage of the Roman yoke,
 Are but a vain and empty ſhade
 Without the ſanction and the aid,
 The forms, the proceſs, and the mode
 Coercive of the Britiſh Code.

How vain's the Civil Law's ⁹ *Citation*,
 The ¹⁰ *Libel*, ¹¹ *OATH*, and ¹² *Fulmination*,

Genius of his time ; he was born at Thoulouſe in 1520,
 and taught and practiſed the Civil Law at Bourges. His
 works were publiſhed at Paris in ten volumes, in the year
 1659.

⁸ EDWARD—Edward the Firſt put a period to the im-
 portant ſtruggle between the Laws of England and Rome.
 Under his diſcipline the Laws of England obtained a com-
 plete and deciſive victory. *Black. Com.*

⁹ *Citation*—Is a ſummons to appear before an Eccleſiaſti-
 cal judge. It contains five material points : 1ſt. Name of
 the Judge and ſtile of the Court. 2. Defendant's name.

Which Surrogate is wont to shed
By wholesale on the culprit's head!—

3. The day and place of appearance. 4. Plaintiff's name.
5. The cause. Citations are of various kinds, either general or special, inhibitory or intimatory, or *viis et modis*, or Prerogative Citations. For a more particular account, I refer the reader to the Proctors Practice.

¹⁰ *Libel*, or *Libellus*, in the Ecclesiastical Courts, answers to the Declaration in our Law, being a Charge drawn in writing on behalf of the Plaintiff, to which the Defendant is obliged to answer. A *Libel*, according to Lanfranc, cap. quoniam de Petition, is defined the Lawyer's Argument.

Quis, quid, coram quo, quo jure petatur, et a quo
Recte compositus quisque Libellus habet.

Fragm. Vet. J. Cti.

Which is thus englisht by an eminent Proctor—

Each Plaintiff and Defendant's name,
And eke the Judge who tries the same,
The thing demanded, and the right whereby,
You urge to have it granted instantly,
He doth a *Libell* right and well compose,
Who forms the same omitting none of those.

¹¹ *Oath*—In the Spiritual Court the answer of the Plaintiff is put in upon Oath, which practice was adopted in the

Did not the Shrieval arm exempt
His *Brutum fulmen* from contempt,
And lend a ¹³ Writ to back the curses
Which he so piously disperses,
With ease Respondent might evade
The laws by Priests and Bigots made,

time of the clerical Chancellors, and has continued ever since.

¹² *Fulmination*—Denunciation of Ecclesiastical Censures, or Excommunication, of which there are two kinds, the *major* and the *minor*; the first is an exclusion from the Communion of Holy Church, and the company of the faithful; the second is an exclusion from the Sacrament, and divine worship: *Venatorius de sen. Excomm.* This latter is generally passed upon obstinate delinquents, refusing to appear upon Citation. The operative words were of old, *Auctoritate Dei Patris Omnipotentis, et Spiritus sancti, et beatæ Dei genetricis Mariæ omniumque sanctorum excommunicamus et a limitibus sanctæ matris Ecclesiæ sequestramus, &c. Leg. Wic.*

¹³ *A Writ*—The *Significavit*, or Writ *de Excommunicato capiendo*, is here alluded to, which is a writ issuing out of Chancery, and so called either from the cause which gives birth to it, viz. the Bishop's certificate, or *significavit*, that the Defendant has stood excommunicate for the space of forty days, the time allotted for his absolution and re-

Their forms and fees of absolution,
 And schemes of Christian persecution,
 For while his Soul was doom'd to smart,
 His Body might in peace depart.
 E'en HE who erst his Judgments hurl'd
 With vengeance o'er the Christian world,
 Pull'd down the mighty from their seats,
 Crush'd empires with his holy threats,
 Absolv'd our souls, our sins forgave,
 And promis'd every w—— and k——
 Celestial beds * * * * *

* * * * *

[Here the manuscript is imperfect.]

* * * * *

* * * * *

Since then to Alfred's potent sway
 JUSTINIAN's Genius must give way,
 To Serjeant's coifs, Civilian's hoods,
 JUSTINIAN's Institute to WOOD's,

conciliation, or from its effects, in empowering the sheriff
 to take and imprison the Respondent in the county goal
 until he is reconciled to Holy Church.

What boots it that your Youth is spent
 In dull * ¹ Cimmerian cloyster pent?
 Why brood ye o'er the toilsome page
 Like Pupils of the Samian Sage
 In ² Silence, till the cheerful Sun
 Has twice seven years his circuit run,
 Poring o'er PUFFENDORF and GROTIUS,
 Ye learned sons of THEODOSIUS?
 Say when your golden hours begin
 What are your rents and comings-in?
 Oh! say, for you can best inform us,
 Good Doctor DRONE, and Doctor
 DORMOUS,
 What mean those Periwigs enormous?

* In dark Cimmerian desert ever dwell.

MILTON.

¹ *Cimmerian*—The Cimmerii were a people in Italy, near the Lake Averno, who lived in caves under ground, inaccessible to the rays of the sun, where the Sibylls gave out their Oracles. See Hom. Odyss. xi. 14.

TIBULLUS iv. 1. 6. 5.

² *Silence*—The year's silence imposed on the Doctors of the Civil Law, on their becoming advocates, as the condition upon which they are admitted to plead in the Ecclesiastical Courts.

Can you upon your OATH declare
That all those costly loads of hair
Are the clear produce of your gains,
The clean net Harvest of your brains?
Are ye Proprietors of these,
Or merely Usufructu'ries?
I grant that Matrimonial Jars,
Rapine, Adultery, and Wars,
By others deem'd the worst of curses,
Have done you Justice, fill'd your purses,
And prov'd themselves no bad resources. }
But in your starving times of Peace,
When naval condemnations cease,
And marriages are held in force
By that construction in Divorce
Which lately caus'd so much confusion
Touching the doctrine of Collusion,
That Husbands now by Wives cornuted
Are patiently to Bucks transmuted,
And ne'er apply to cunning men
To bring them to their Shapes again,

Your visages, I must conclude,
Will much increase in Longitude;
Peace which brings blessings to the Nation
Will make a Lent of long Vacation,
Your Clients when they bring their Cases
Will read Good Friday in your faces,
And ev'ry individual cheek
Remind them of an Ember week.
Thank Heav'n, in War as well as Peace
My person thrives, and fees increase;
Not e'en the wretches I undo
Will look so woebegone as You;
But though our separate walks we take,
Though our respective Planets make
Such difference 'twixt Ourselves and You,
Since two congenial Trades we woo,
Both in the Folly of Mankind
Such Comfort and Advantage find;
Both to the field of battle go,
Like Swiss to fight for Friend or Foe;
I much esteem such worthy neighbours,
And much your smiles will cheer my labours,

While to my Kinsman I impart
The secrets of the Pleading art,
Teach him the best and readiest way
To harass and secure his prey,
Shew him the practice of *Attaching*,
Distraining, hunting down and catching,
In *Trespass* how to spread his net,
In *Case*, in *Trover*, or in *Debt*.
And not to spread alone, but draw
Assignments, and demur in Law;
Then when the Issue is enroll'd,
And at the Bar the Story told,
Give him with Eloquence and Grace
So well to varnish o'er the Case,
That e'en the Judges curious eye
Shall scarce its rotten parts descry,
And though the facts as noon-day clear
Against his Client's cause appear,
Give him with fustian and bombast
So thick a fog o'er truth to cast,
With words of such due size and fitness
To badger and confound a witness,

That all who hear him ſhall confeſs
For language, manner, and addreſs,
He fairly equals in renown
Thoſe two choice Heroes of the Gown,
So fam'd for Ciceronian Eaſe
And Demothe³nic ΔΕΙΝΟΤΗΣ,
Thoſe Neſtors of the Britiſh forum,
Th' illuſtrious BOTHER'UM and BORE'UM.

But ſince in theſe diſtreſſful days
When Hunger prompts Poetic Lays,
And Bards who feel no other fire
Than what th' Aonian nymphs inſpire,
No cordial ſip ſave what diſtills
From ^b AGANIPPE's purling rills,
Retiring from the Vales of Pindus
To garret vile with darken'd windows,

^b ————— Cum deſertis Aganippes
Vallibus eſuriens migraret in atria Clio.

Juv. Sat. 7. lin. 6.

³ ΔΕΙΝΟΤΗΣ—A character of oratory, which at once
unites acutenefs, energy, and perfeverance. See Demoſt.
Thucyd. Iſocrat. *paſſim*.

Are forc'd by lofty invocations
To swell their meager publications,
And while they rest in time of need
To bait the Pegasean Steed,
Implore some Deity's kind favour
To give their tasteless rhymes a flavour,
I, who by Law and Justice claim
As fair pretensions to the fame,
Shall beg some Godhead to attend
And help me to my Journey's end,
And lengthen out by frequent pauses
My Lectures, as I've done my Causes.

And first bright CYNTHIUS I'll *subpæn'*
From hallow'd fount of HIPPOCRENE,
And *summons* from th' Aonian Grove
The Daughters of Olympian Jove;
But if those sweet harmonious Maids
Disdain to quit their vocal shades,
Nor Cynthia will his Fount forsake—
To gloomy Dis my prayer I'll make,
And seek the Acherontic Lake,

Down to the Hall of Erebus I'll go,
And * *move* some Dæmon in the Courts below.

* Flectere si nequeo Superos Acheronta movebo.

VIRG.

LECTURE IV.

Of the COMMON LAW Procefs—Invocation to an Infernal Spirit—Of the ORIGINAL, or Original Writ—And Procefs thereon—The High Sheriff—His Executive Power—Of Law Fictions.

COME then thou Goddess of Contention,
Genius of Craft, and Circumvention,
You, who in parchment Robes array'd,
And tape-tied vest of vellum made,
With ink-stain'd lips, and eye-balls blear'd,
And thumbs with wax and rosin smear'd,
The baleful bitter draughts prepare
Of Poverty, Revenge, and Care,
And every tender tie remove
Of Amity and social Love;
Where'er you wield the Law's machine,
Whether at Lincoln's Inn you're seen,
Or those fam'd walls where Serjeants sleep,
And plodding Clerks their vigils keep,

Or at the Temple, as thy truſt is,
 Open the ſacred mint of Juſtice,
 Whate'er the learned haunt you love,
 Where'er thy buſy footſteps move,
 Say, if ſome dire occaſion leads
 Two ſimple wights to logger-heads,
 Such as of late bred doleful dudgeon
 'Twixt JOHN-A-GULL, and JOHN-A-
 GUDGEON,
 (Thoſe ill-ftarr'd Chiefs whoſe wrath to ſing
 'Vent'rous I 'wake the trembling ſtring,)
 What inſtrument of dread import
 Muſt bring the parties into Court,
 From Juries to obtain relief,
 And juſtice from a Counſel's brief?—
 The WRIT—from Chancery it came,
 And Pleaders muſt adore the name,
 The Writ, that works the public Good
 Oft ſaves th' expence of Chriſtian Blood:

* Τις Ἰαρ' σφῶς θεῶν ἐπιδι ξυνέηκε μάχεσθαι ;

Δηῖος καὶ Διὸς υἱός.

HOMER.

Oft, when two Champions burn with rage
And pant in combat to engage,
Both fix'd their valour to proclaim,
Both resolutely bent to aim
(Whether with paper charg'd or lead)
A Pistol at each other's head,
Calmly steps in, bids Reason 'wake,
And Wrath her rash resolves forsake,
The instruments of Death restrains
And spares a trembling Hero's brains,
Yet loth to disappoint the Devil,
Involves them in a forer evil,
The worst of evils 'tis confess'd
(But guard this secret in thy breast),
With LAW entangles and turmoils,
And holds them in a Pleader's Toils—
The WRIT ¹ ORIGINAL—the root
And master spring of ev'ry suit,

¹ ORIGINAL—This writ is so called κατ' ἐξουσίαν, being the writ which gives the Courts of Common Law Jurisdiction, and that upon which all subsequent Process is founded.

Which erst in mouldy ² hamper slept
 By Lawyers *Hanaper* yclept,
 Was held much learning to display
 When Learning in her Cradle lay;
 Then first its influence began
 To charm like Eastern Talisman,
 In form grotesque, and antique guise,
 Which Justice did of old devise,
 With Parchment wing and ³ signet pendant
 Flew forth to summons the Defendant,

² *Hamper* or *Hanaper*—In Latin *Hanaperium*. The *Hanaper* office belongs to the Common Law Court in Chancery. Original Writs, in all matters of a civil nature between subject and subject, were kept according to the simplicity of ancient times, in a hamper, as those in which the interests of the Crown were concerned were preserved in a *small bag*, (*in parvâ bagâ*) which is the foundation of what is now called the Petty bag office.

Black. Com. Vol. 3. c. 4.

³ *Signet Pendant*—“ The Original Writs issued out of
 “ Chancery, because when the Courts were but one, the
 “ Chancellor held the Seal, therefore, when they were
 “ divided, he, still keeping the Seal, sealed all Original

Stuttering abbreviations mystic
 In sign and token cabalistic,
 Latin furcharg'd with Norman French,
 Returnable to ⁴ *Common Bench*,
 A mixture, which like that of Babel,
 The Shrieve to construe was not able,
 And though by Law no human creature
⁵ *Ad impossibile tenetur*,
 Defendant at the Shrieve's command
 Must at his peril understand;
 But He perhaps who lack'd the wit
 To scan the learning of the Writ,
 Was much too wise at once to close
 And grapple with his injured Foes,

" Writs. By this means the Seal was a Check upon the
 " other Courts, to know what Cause was there."

GILBERT *Com. Pleas*, p. 2.

⁴ *Returnable*, &c.—The Original being made returnable in Common Pleas, gives the Court Jurisdiction to hold Plea of the matter therein specified, as it does in the King's Bench when made returnable in that Court.

⁵ *Ad impossibile*—The Law obliges no man to perform impossibilities.

Might rather wish to be excus'd
 From taking pains to be abus'd,
 Content his person to ⁶ *eloign*,
 Or stay at home and cast ⁷ *Essoign* :
 But though the Law in modern days
⁸ Three barbarous Tongues no more displays,

⁶ *Eloign*—*Eloigner*, Fr.—To remove, or send away.

⁷ *Essoign* or *Essoine*, Fr. *Essonium*, Latin,—signifies an excuse for him who is summoned to appear to the *Original Writ*. The original writ is made returnable within fifteen days, the *Essoign* day is the first of three days next immediately preceding that on which the Court sits for the dispatch of Business, and on which the Defendant is obliged to appear to the Writ.

⁸ *Three barbarous*, &c.—Till the reign of Edward the Third, all Proceedings at Law were in the old Norman French, but by a Statute of that King's reign, (36. c. 15.) it was enacted that all Pleas should be pleaded, &c. in the English tongue, but be entered and enrolled in Latin. The Latin which succeeded the French, and which was in truth a composition of French, English, and Latin, continued in use for 400 years, without interruption, till the Usurpation of Cromwell, when the language of the Record was altered into English, but at the Restoration, the Latin language was again used, and continued till the year 1730. when it was finally altered and settled by 4 Geo. 2d. c. 26.

Like Pluto's triple headed monster,
 And Pleaders can their Pleadings construe,
 Though Sheriffs now the Writ's intent
 Are taught by Act of Parliament,
 And all mankind so wise are reckon'd
 E'er since the fourth of George the Second,
 That none against the Laws in use
 From Ignorance can plead Excuse,
 Still lest the Suit should be delay'd,
 And Justice at her Fountain stay'd,
 A ⁹ *Capias* is conceiv'd and born
 Ere yet th' ORIGINAL is drawn,

⁹ *Capias*—A Writ so called from the most operative word in it, is of two sorts, the one a *Capias ad Respondendum*, before judgment, being a Process to compel the Defendant to answer, as it occurs in this place, and the other a *Capias ad Satisfaciendum*, which is a Writ of Execution. The practice here alluded to, is that which is now in use, and was introduced on the discontinuance of real Pledges, for ease and expedition, whereby the Original is become in effect a mere useless and unnecessary process, but nevertheless considered as indispensable in warranting the *Capias*, and giving the Court Jurisdiction, and is therefore sup-

To justify the Court's proceedings,
 Its Forms, its Proccesses, and Pleadings,
 And thus, by ways and means unknown
 To all but Heroes of the Gown,
 A Victory full oft is won
 Ere Battle fairly is begun;
 Tis true, the wisdom of our Laws
 Has made the Effect precede the Cause,
 But let this Solecism pass—

¹⁶ *In fictione æquitas—*

posed to be actually subsisting before the *Capias* is sued out, although it is notorious that after the Roll is made up, the Curfitor makes out the ORIGINAL to warrant the *Capias*, and delivers it to the Filazer to be filed with the *Custos Brevium*.

¹⁰ *In fictione Juris consistit æquitas—Legal fictions are grounded on Principles of Equity—*

LECTURE V.

*Process continued—Of the Writs LATITAT—
CAPIAS—QUO MINUS—Of filing Common
Bail—Of Special Bail, or Bail to the Ac-
tion.*

LIGHT lie the sculptur'd Marble o'er his
Breast,

Blaz'd be his Virtues, and his Sins suppress'd,

And wheresoe'er his bones are laid

Thrice honour'd be that Lawyer's Shade,

Who Truth with Nonsense first combin'd,

And EQUITY with Fiction join'd,

And had the goodness to assign us

¹ LATITAT, ² CAPIAS, and ³ QUO MINUS!

¹ LATITAT—A Writ so termed because it suggests, as the ground of the power therein given to the Sheriff, A FICTION in Law, viz. that the Defendant is not to be found in the County of Middlesex to be taken by Bill of

Melodious Sounds! at once they cheer
My Spirits, and regale mine ear,
What Bard howe'er in Fiction vers'd,
By rhyme *subpœna'd*, and coerc'd,

Middlesex, as it is called, but lurks and lies hid, or, as it is expressed, *runs up and down secreting himself*, within the Bailiwick of the Sheriff, to whom the writ is directed. F. N. B. 78. It is in *practice* the first process in order to compel an appearance in the King's Bench, in the like manner as the *Capias* is in the Common Pleas: the *Capias* proceeds as was before shewn upon a Fiction, that the Original had been previously sued out, and the *Latitat* issues in the King's Bench upon the like *Fiction*, that the Bill, which is called the Bill of Middlesex in that Court, has actually issued to the Sheriff of that County, and been returned as ineffectual.

² *Capias*—Vid. ante, p. 40, in notes.

³ *Quo Minus*—Is the first Process in the Exchequer, as the *Latitat* is in the King's Bench; it issues upon a surmise that the Plaintiff is the King's Debtor, which serves to give the Court a Jurisdiction. It is called *Quo Minus* because the Plaintiff, being for this reason supposed to be the King's Debtor, it is suggested as of course, that he is the less able to pay the Debt by reason of the Injury complained of in the Action.

Due homage to their worth shall pay
 And all their various powers display ?
 If haply *John-a-Stile* provoke
 The legal fight 'gainst *John-a-Noke*,
 The LATITAT the foe besieges
 And baffles him in *Banco Regis*.
 Skill'd with ⁴ *Ac-Etiams* to perplex
 And foil with ⁵ *Bills of Middlesex*,

⁴ *Ac-Etiam*—An *Ac-Etiam* is a Clause inserted in the *Latitat*, by virtue of the 13th Car. 2. c. 2. which enacts, that no writ of Trespass should hold Defendant to bail, &c. any further than an Appearance, unless the true Cause of Action was expressed in the Writ. And therefore in a *Latitat* it runs thus, after the words to answer A. B. in a Plea, &c. AND ALSO to a Bill of the said A. against the said B. to be exhibited according to the Custom of our Court before us for £ — upon promises, or debt, as the Case may be.

⁵ *Bill of Middlesex*—A *Bill of Middlesex* is a Precept directed or presumed to be directed to the Sheriff of that County in which the Court of King's Bench sits, for if it sat in any other County, it would be termed a Bill of that County ; it is called a Bill, and signed *Per Billam*, to distinguish it from the *Original*. It formerly issued to warrant the *Tessatum*, or as it is now called the *Latitat*, of

QUO MINUS guides the wordy war
 And ⁶ *mates* him at th' Exchequer Bar,
 While CAPIAS is rejoic'd to seize
 And plunder him at ⁷ *Common Pleas*:
 Nor will it boot th' indignant *Noke*
 Or God or Goddeſs to invoke,
 Nor God nor Goddeſs ſhall convey
 His perſon from th' impending fray,
 Doom'd in the Action to *appear*,
 'E'en though the ambient Cloud he wear,

————— ————— Αἶλαρ Ἀθήνη
 Πολλὸν ἥερα χεῦε φίλα φρονέες Ὀδυσῆι. HOM.
 At Venus obscuro gradientes aere ſepſit
 Et multo nebulæ circum Dea fudit amiatu. VIRG. Æn.

which above; but modern practice has consolidated the two writs in Effect, by reciting in the *Latitat* that the *Bill of Middleſex* has already iſſued, which is generally *false*.

⁶ *Mates him*—The Exchequer took its name *a Tabulâ ad quam affidebant*. Camden Brit. p. 113. The Table is covered with cloth reſembling a Cheſs board, whereon when certain of the King's accounts are made up, the ſums are marked and ſcored with Counters. *Blac. Com.* vol. 3. p. 44.

⁷ *Common Pleas*—*Communia Placita*, the Court of Common Pleas holds connuſance of all Pleas which are not of

Which Laertiades of yore,
 Or Citherea's Offspring wore.
 For lo! a grisly Shrieval Band
 That round the seat of Justice stand,
 * Give dreadful *Note* of Preparation
 And *summons* him to litigation,
 Force him the doubtful war to wage,
 To file his ⁹ Sureties and engage,
 Or if the *Summons* he resists,
¹⁰ *Enter his name* upon the Lists,

the Crown, and which being between subject and subject, are properly denominated *Common Pleas*. Some have supposed that the word *Pleas* is short for the word *Pleasures*, and that the term *Common Pleas*, as applied to the practice of the Court, means the *Pleasures of the Community*.

⁸ *Note of Preparation*--The *English Notice* is here alluded to, which is used in all cases where the Defendant is not to be held to Bail.

⁹ *Sureties*--Viz. Common Bail, *Messrs. John Doe* and *Richard Roe*.

¹⁰ *Enter his name*--In case the Defendant fails to file *Common bail* or *enter his Appearance*, the Statute 12 Geo. First, empowers the Plaintiff to *enter an Appearance for him*,

Where each blest *Fiction* is enroll'd
 The legal conflict to uphold,
 All for the wisest ends constructed,
 That Suits may better be conducted,
 That every Lawyer in his Station
 May reap the fruits of his Vocation,
 That Pleas, and Pleaders may prevail,
 And Justice equal hold her golden Scale.

But yet alas! not all conspire
 Such legal wisdom to admire.
 There are of Writs who disapprove,
 " Dread Bail *below* and Bail *above*,

and to leave a Declaration in the proper Office, and upon giving him Notice to plead thereto, to proceed to Judgment.

" *Bail below and bail above*—The word *Bail* is derived from the French *bailler*, to deliver, because the Defendant when arrested, is delivered over to his Sureties, who bind themselves for his forth-coming at a day and place certain. *Bail below* is the Bail to the Sheriff, taken by him, upon the Execution of the Writ of Arrest. This species of Bail is called *Special*, as contradistinguished from *Common* Bail, beforementioned, the Sureties being real and substantial bondsmen, and not fictitious, as in the case of *Common* Bail.

Whom worse than Goblins damn'd, the sight
Of Sheriff's myrmidons affright,
The silver Tag, and vermil Stamp
Chill to the soul with horror damp :
These scent the Process from afar,
And fly the Din of Parchment War.
But let the Plaintiff, ere he sue
¹² In *debt* or *case* for money due,
Swear to the sum, the writ indorse,
And let the Shrieve said writ enforce,
Be quick to execute, but slow
To take the proffer'd bail *below*,

Bail *above* is the Bail in Court, upon the Defendant's appearance at the return of the Writ, or four days after. It is likewise termed *Bail to the Action*, and is effected by what is called *Justifying Bail*, or the Oath of the Sureties upon examination as to their competency and responsibility.

¹² *In debt, &c.*—By Debt, or action of Debt, is meant an Action for a determinate specific sum, and is usually brought upon Specialties, i. e. Debts arising upon Deeds and Instruments under seal; the ordinary remedy for indeterminate sums is by *Action on the Case*, as it is called, i. e. upon the particular circumstances of the case this remedy is

Lest with the Plaintiff's Suit embroil'd,
The ¹³ Shrieve at his own weapons foil'd,
The bond assign'd, the Debtor fled,
Himself Defendant in his stead,

granted at Common Law, and by virtue of the Statute of Westminster, the second, 13 Ed. I. &c.

By 12 Geo. I. the Plaintiff is obliged to make affidavit of his Debt, and that the sum due is £10. or upwards, before he is entitled to hold Defendant to Bail, and if he is desirous of taking a Security above £40. he is by the Statute of 13 Car. II. c. 2. obliged not only to swear to the Sum, but have it inserted in the body of the Writ, or Process. The Practice is to mark the Sum sworn to by the Plaintiff on the back of the Writ, e. gr. *Bail by Affidavit affiled for £10.* and the Sheriff is then required to arrest the Defendant; where the Debt is under £10. the Defendant can only be served with a Copy of the Writ or Process, with an English Notice subjoined.

¹³ *The Shrieve, &c.*—If the Sheriff accept bail, which afterward prove insolvent, and does not cause sufficient bail to be put in *above*, he will be himself responsible to the Plaintiff.

The Sheriff is liable to an Action for taking insufficient Bail, as well as to Amerciament. *Raymond* 425. *Salk.* 99. *Sid.* 96. 2 *Saund.* 58, 59.

Be doom'd with curses to bewail
The horrors of insolvent Bail,
His folly to his Cost expose,
And bear the weight of others' woes ;
Till by the Plaintiff vex'd, and sped,
Fresh Suits impending o'er his head,
He feels in dreams, or seems to feel
14 His own Bum-bailiff at his heel,
Flies his own writs, and strives to shun
Th' ideal form of frightful Dun,
Which e'en in Sleep his arm assails,
Nor aught his Shrieval wand avails
To conjure down the restless Sprite,
Or speed him in his fancied flight.

¹⁴ *Bum-bailiff*, is a corruption of the word bound-bailiff, or special bailiff, as contradistinguished from the Bailiff of a Hundred.

LECTURE VI.

*Of Procefs against privileged Persons—Of the
DISTRINGAS—Its physical and chirurgical
Qualities—Procefs to OUTLAWRY, and the
Party's Appearance upon the CAPIAS UTLAGATUM.*

LIVES there a Senator un plac'd,
Already ruin'd and disgrac'd,
A Legislator who retires
Before his *Privilege* expires,
Sans House, *sans* Land, *sans* Goods and
Chattels,
Or party friend to fight his battles?
No writ his footsteps can detain,
No procefs can his Skin diftrain,
And though a sudden DISSOLUTION,
Might fit him for an Execution,
'Twere best a prudent course to take,
And spare him for his Country's sake,

For could a Member's skin when dried
Make Parchment like ' John Zisca's hide,
Would it not favour of extortion
Should ev'ry Lawyer take his portion?
Great heroes howfoe'er inclin'd
To harass and destroy mankind,
Ne'er flesh the steel, or roll the thunder,
Without some hopes of fame and plunder,
And LAWYERS who no less delight in
The Trade of quarrelling and fighting,
Should be as kind and tender hearted
To those who with their Cash have parted,
Ne'er from the paths of Honor swerve,
But hold compassion in reserve,
And where they see no hopes of booty
Abate the rigour of their duty.
Tis true, there are, in whom you'll find
Birth, splendor, pride, and meanness join'd,

¹ *John Zisca*—This anecdote of John Zisca is recorded in Mr. Burke's celebrated letter to the Duke of Bedford, which leaves little room to doubt but that this very eminent and ingenious writer must have obtained a sight of Mr. Surrebutter's Professional Lectures in the original M. S.

Who Writs by *Privilege* elude,
 Yet labour for the public Good,
 Against a Nation's debts inveigh,
 Yet scorn a Tradesman's bill to pay,
 Who pains and penalties create
 For grand Defaulters in the State,
 Yet fain would 'scape the Sheriff's search
 And leave a Plaintiff in the lurch;
 But thou, O Shrieve, art not the son
 Of that wise Jew King Solomon,
 Nor canst thou claim the least pretence
 To *Common Law* or *common sense*;
 Shouldst thou one legal step neglect
 Their stubborn humours to correct,
 Take your² *DISTRINGAS*, come athwart 'em
 And operate *secundum artem*:

² *Distringas*, or *Distrefs infinite*—This Writ commands the Sheriff to distrain the Defendant from time to time, and continually afterwards, by taking his goods and the profits of his Lands which are called *Issues*, and which by the Common Law he forfeits to the King; but the Court may direct the *Issues* to be sold to defray the reasonable costs of the Plaintiff. *Bl. Com.*

You'll find it, in its full extent,
A pretty useful instrument,
For making *Issues* with, the quicker
To drain their Cash into th' Exchequer,
With this same instrument pursue 'em,
And drain them till you quite undo 'em ;
Work them, till thoroughly aggriev'd,
Of goods and chattels they're bereav'd ;
In every legal operation
There's nothing like evacuation.

But is there one who unprotected
Has long his Creditors neglected,
Without the privilege to shine
Or slumber in St. Stephen's shrine,
A lazy wight, of snuggles fond,
Who'd fain from love of ease abscond,
And just has learn'd enough of Law
To make him all its ways abhor,
Has heard that ³ *Quare clausum fregit*
May breed a monster call'd ⁴ *Elegit*,

³ *Quare clausum fregit*—The Writ of *Capias* before mentioned as the leading process of the Court, is here alluded

Conceives that⁵ *Ca' sa's* are vexatious,
 And shudders at a ⁶ *feri facias*?
 If rich, do thou O Shrieve make sure
 His goods or person to secure,
 Give HIM by way of how d'ye do
 A smack of your DISTINGAS too,

to under a different name; if the Defendant is to be held to bail, it is used with an *ac Etiam*, (of which before) and is called a *bailable Capias*; if not, the *English Notice* is subjoined, in lieu of the *ac Etiam*, in pursuance of the 12 Geo. 1. and it is then called a *common Clausum fregit*.

⁴ *Elegit*—Is a Writ of Execution against the Goods and Chattels, and also one half of the Defendants Lands, to be held by the Plaintiff until the Debt or Damages and Costs are satisfied.

⁵ *Ca' sa's*—A *Ca' sa'* as it is called, or *Capias at satisfaciendum*, is a Writ of Execution directed against the Body of the Defendant, in satisfaction of the Plaintiff's debt.

⁶ A *Fieri facias* is another Writ of Execution, directing the Sheriff to cause to be made or levied, (*facias fieri*), from the goods and chattels of the Defendant sufficient to satisfy the Plaintiff's debt and damages.

But first ⁷ *attach him*, and attend
 With *Capias ad Respondend*,
 Let loose the Dogs of War and furies,
⁸ *TESTATUM, ALIAS, and PLURIES* ;

⁷ *Attach him*—The Student will observe the order of the Process to Outlawry regularly pursued ; but it would swell these Notes to an inconvenient length, were the Editor to dwell longer in detail upon the subject than may be absolutely necessary to illustrate the Text. The *Original* or *Præcipe* has been already mentioned, which is followed by the *Attachment*, or writ of *Pone* ; the *Distringas* and *Capias ad satisfaciendum*, concerning which we have already treated.

⁸ *Testatum*, or *testatum Capias*, is a second Writ of *Capias*, directed to the Sheriff of another County upon the return of the first *Capias*, and is so called from the principal word that occurs in it ; it recites the former writ, and states that it is *testified* or (*testatum est*) that the Defendant *lurks* or *wanders in the bailiwick* of the Sheriff to whom the Writ is directed, and upon the Sheriff's return of *non est inventus*, there issues successively the *alias* Writ and the *pluries* Writ, which are so called because after the words, " we command you," (*præcipimus*) the words *sicut alias*, or *sicut pluries*, " as we have formerly, or, " as we have often commanded you," occur in these Writs, as the reason of their being issued.

But if at length *non est invent'*,
 At him again with ⁹ *Exigent*,
 Proclaim him by the Act's direction
 (*Act 31st Eliz. 3d Section*)
 Then smite him as a *Coup de Grace*
 With ¹⁰ *Utlagatum Capias*.

Exacted, outlaw'd, and embruted,
 His head to head of ¹¹ *Wolf* transmuted,

⁹ *Exigent*—If the Sheriff returns *non est invent'* upon all the writs, a Writ of *Exigent* may be sued out, which requires the Sheriff to cause the Defendant to be proclaimed, required, or exacted, in five County Courts successively, and if after being so exacted, he does not appear, he is outlawed.

¹⁰ *Utlagatum Capias* is the Writ authorizing the arrest of the Defendant, and his Commitment to Prison till the Outlawry is reversed.

¹¹ *Wolf*.—Alluding to the ancient Common Law Doctrine of Outlawry, the punishment whereof was Death, and therefore an Outlaw was said to bear *caput Lupinum*, because any man might kill him as he might kill a wolf. *Utlagata et waviata, capita gerunt Lupina quæ ab omnibus impune poterunt amputari, merito enim sine lege perire debent qui secundum legem vivere recusant.* Process to Outlawry

Compell'd by writ of *Exigent*
The Lists against his will to enter,
See where the Captive Wretch in Court
Meet subject both for gain and sport,
By Writ, as by the Cup of Circe,
Transform'd, and at the Plaintiff's mercy,
Stands like a Roman Gladiator,
To do a deed against his nature ;
While we who compass'd his undoing
Claim the sole merit of his ruin ;
For this we never fought your aid,
Ye Doctors of the Civil Trade,
Nor ever thank'd you for a Curse
To help us to Defendant's purse,

lies in all actions *vi et armis* ; by Stat. 13 Ed. I. it lies in account ; by 25 Ed. III. c. 17. it lies in Debt, Detinue and Replevin ; and by 19 Hen. VII. it lies in Case and in Trespass ; it is now considered, and used only as a process to compel an Appearance, and may be reversed upon the Defendant or his Attorney appearing in Court, and indemnifying the Plaintiff in full Costs.

Or strip him of a single Chattel,
Ye learned votaries of Vattel.

Now Doctors, reperuse this Case,
And study the Defendant's face,
Read in his looks the operation
Of legal charm and conjuration,
A woeful visage worn with Cares !
Such as an exil'd Patriot wears—
But could you gain a sight of mine,
You'd take me for a sleek Divine,
Whose smooth Cherubic features shew
The fruits which from good living flow ;
Tis true the nature of my Face
Bears fewer signs of inward Grace,
Though something on the whole you'll find
Which indicates no vulgar mind,
A certain graceful tinge of copper,
That's quite professional and proper :
But by what charm or magic spell
I look so plump, and thrive so well,
So gay, so blithe in my demeanour,
While you so splenetic and lean are,

If I am *cited to confess*,
The Muse shall venture to digress,
In sportive Rhyme of artless mould
Her "plain unvarnish'd tale unfold",
And cheerfully obey your *Summons*,
Good Gentlemen of DOCTORS COMMONS.

LECTURE VII.

*An Episode containing authentic Memoirs of
Mr. SURREBUTTER'S Professional Career.*

WHO'E'R has drawn a Special Plea,
Has heard of old TOM TEWKESBURY,
Deaf as a post, and thick as mustard,
He aim'd at Wit, and bawl'd and bluster'd,
And died a *Nisi prius* Leader—
That Genius was my SPECIAL PLEADER—
That great man's office I attended
By HAWK and BUZZARD recommended,
Attorneys both of wondrous skill
To pluck the Goose, and drive the Quill ;
Three years I sat his smoky room in,
Pens, paper, ink, and pounce consuming,
The fourth, when *Essoign Day* begun,
Joyful I hail'd th' auspicious Sun,

Bade TEWKESBURY and Clerk adieu,
(¹ Purification, Eighty-two)
Of both I wash'd my hands ; and though
With nothing for my cash to shew,
But Precedents so scrawl'd and blurr'd,
I scarce could read one single word,
Nor in my books of Common Place
One feature of the Law could trace,
Save BUZZARD's nose and visage thin,
And HAWK's deficiency of Chin,
Which I while lolling at my ease
Was wont to draw instead of Pleas ;
My chambers I equipt complete,
Made Friends, hired Books, and gave to eat ;
If haply to regale my friends on,
My Mother sent a haunch of Ven'son,

¹ *Purification*—The morrow of the Purification of the Blessed Virgin Mary is one of the return days of Hilary Term.

I moſt reſpectfully entreated
 The choiceſt Company to eat it,
To wit, old BUZZARD, HAWK, and CROW,
Item, TOM THORNBAC, SHARK, and Co,
 Attorneys all as keen and ſtaunch
 As e'er devour'd a Client's haunch;
 Nor did I not their Clerks invite
 To taſte ſaid ven'ſon haſh'd at night,
 For well I knew that hopeful Fry
 My riſing merit would deſcry,
 The ſame litigious courſe purſue,
 And when to fiſh of prey they grew,
 * By love of food and conteſt led,
 Would haunt the ſpot where once they fed;
 Thus having with due circumſpection
 Form'd my profeſſional connexion,
 My deſk with Precedents I ſtrew'd,
 Turn'd critic, danc'd, or penn'd an ode,
 Studied the *Ton*, became a free
 And eaſy man of Gallantry :

* Egit amor Dapis atque Pugnae.

HOR.

But if while capering at my Glafs,
Or toying with some fav'rite Lafs,
I heard th' aforefaid HAWK a-coming,
Or BUZZARD on the staircase humming,
At once the fair angelic maid
Into my Coal-hole I convey'd,
At once, with serious look profound
Mine eyes commercing with the ground,
I feem'd like one eſtrang'd to ſleep,
" And fix'd in cogitation deep,"
Sat motionleſs, and in my hand I
Held my ³ *Doctrina Placitandi*,
And though I never read a page in't,
Thanks to that ſhrewd well-judging Agent,
My Siſter's huſband, Mr. SHARK,
Soon got fix Pupils and a Clerk,

³ *Doctrina Placitandi*, " or the art and ſcience of Special Pleading, a book ſo entitled, ſhewing where and in what Caſes, and by what Perſons, Pleas, as well real as perſonal, and mixed, may be properly pleaded."

Five Pupils were my flint, the other
 I took to compliment his Mother ;
 All round me came with ready money
 Like Hybla bees furcharg'd with honey,
 Which, as they prefs'd it so genteelly,
 And begg'd me to accept so freely,
 Seem'd all so fond of SPECIAL PLEADING,
 And all so certain of succeeding,
 I, who am always all compliance,
 As well to Pupils as to Clients,
 Took as genteelly as they paid it,
 And freely to my purse convey'd it ;
 That I might practically shew,
 And they in *special* manner know
 Ere they began their Pleas to draw,
 What an * ASSUMPSIT meant in Law—

* *Assumpsit*—A form of Action so called. When one man becomes legally indebted to another, the Law implies a Promise of Payment, for which, what is called *indebitatus assumpsit* lies.

To wit for divers weighty fums
 Of *lawful cash* at Pleader's Rooms,
 By me said Pleader, as was prudent,
^s *Had and received* to use of Student;
 In short, I acted as became me,
 And where's the Pleader that can blame me?
 Not one of all the trade that I know,
 E'er fails to take the Readyrino,
 Which haply if his purse receive,
 No human art can e'er retrieve.
 Sooner when Gallia's credit's flown
 To some *Utopian* world unknown,
^c *ASTRÆA* shall on earth remain
 The last of the celestial train,

^c *Ultima calicolum Terras ASTRÆA, reliquit.*

VIRG.

^s The action for money *had and received*, lies only for money which, *ex æquo et bono*, Defendant ought to refund. Com. dig. Tit. Action on the Case—in assumpsit, a. 1.

For money paid by mistake or on a consideration which happens to fail. *Id.*

To tender *Assignats* at *Par*
 Triumphant in the *Champ de Mar'*,
 And when their deep-laid projects fail,
 And *Guillotines* no more avail,
 Her baffled Statesmen shall excise
 Some new found region in the skies,
 And tow'ring in an air balloon
 Pluck *Requisitions* from the Moon ;
 Sooner the daring wights who go
 Down to the watery world below,
 Shall force old Neptune to disgorge
 And vomit up the ROYAL GEORGE,
 Than He who hath his bargain made
 And legally his cash convey'd,
 Shall e'er his pocket reimburse
 By diving in a Lawyer's Purse.

LECTURE VIII.

Memoirs continued—Mr. SURREBUTTER is called to the Bar—Goes the Circuit—The Character of MR. JOSEPH FERRET, a Country Attorney—Subject resumed—Instructions in the Art of SPECIAL PLEADING—Messrs. JOHN DOE and RICHARD ROE—Conclusion of the first Book.

THUS in my faddle I was seated,
Ere scarce one *Lustrum* was compleated,
But when my Mental Powers I weigh'd,
My figure and my mien survey'd,
A bold Caufidical appearance,
Strong nerves, strong parts, and perseverance,
Far nobler views inspir'd my mind,
It seem'd that Nature had combin'd
An eye to threaten and command,
And brows no mortal could withstand,
With lungs of *Æolus* and *Stentor*,
For some great purpose, peradventure,
There is, I cried, (and dropt my Pen,)
A Tide in the affairs of men,

Which leads to fame and fortune thoſe
 Who take it while the current flows,
 There is, ye Gods, there is a Crifis,
 I'll ſeize it whatſoe'er the price is :
 PROZER was dead, and Serjeant QUIRKIT
 Grew huſky, and had left the Circuit,
 And as for SHARK's friend SHOVELNOSE,
 We long had deem'd him meat for crows ;
 I ſcorn'd in this dull ſcene to tarry,
 Effay'd at once a loftier Quarry,
 At once indulg'd my fav'rite biaſs
 And ſtamp'd my fame at *Niſi prius* :
 So now I take my brace of nags,
 My Note-book, Clerk, and Saddle-bags,
 And ſaunt'ring gently on my Journey,
 Look out for ſome good rich Attorney,
 One that's a Judge of parts and merit,
 Such as that choice diſcerning ſpirit, }
 My worthy little friend JOE FERRET,
 That honeſt, free, good natur'd ſoul,
 Who ſtands ſo high upon the Roll,

And fills with such *eclat* and grace,
 That pretty comfortable place,
 He gain'd by Government Connexions,
 And prudent conduct at Elections,
 By making Ministerial bounty
 Pass for his own throughout the County :
 A friend to all who are oppress'd,
 And seek by Law to be redress'd,
 One that abhors all Compositions,
 All mean ¹ *Retraxits*, and *Submissions*,
 Scorns ² *Arbitrations* as a stain
 To *ninth* and *tenth* of WILLIAM's Reign,

¹ *Retraxits*—A *Retraxit* is a withdrawing of the Suit by the Plaintiff, and is so termed from the most effective word in the old Latin Entry.—A *Retraxit* differs from a *Nonfuit* in this respect, a *Retraxit* must be by the Plaintiff's Appearance, and personally withdrawing his Suit—a *Nonfuit* is effected by the Plaintiff's non-appearance upon being called. In the first, the Plaintiff voluntarily *retracts* his pretensions to sustain the Suit, which operates as a perpetual Bar to any subsequent Action for the like Cause—a *Nonfuit* is only an abandonment of the Suit *Pro hac Vice*.

² *Arbitrations*—By the 9 and 10 W. 3d. c. 15, it is enacted, That Merchants, Traders, and all persons desiring

Acts, which he deems mislead his Clients,
 Cramp Genius, and degrade the Science ;
 But when the sparks of discord rise,
 Should Parties wish to compromise,
 My little Friend provokes the flame,
 Encourages and spreads the same,
 And with such Zeal and judgment blows
 The coals of strife 'twixt friends and foes,
 He ne'er can fail at 'fsize or session,
 Of growing *warm* by his Profession ;
 His Garden's neat, the Messuage good,
 The best in all the neighbourhood,
 With door Chinese the front is grac'd,
 His windows are of Gothic taste,
 The which, to me, though all the Village
 Conceive they're got by fraud and pillage,

to end their controversies by Arbitration, may agree that their *submission* of their Suit to the Award or Umpirage of any person or persons should be made a rule of any of his Majesty's Courts of Record ; and in case of disobedience to such Award or Umpirage, the parties neglecting or refusing to perform the same, shall be subject to all the Penalties of contemning a Rule of Court.

And both th' Exciseman and the Rector
Despise his taste in architecture,
To me, whose taste is less refin'd,
And more to social joys inclin'd,
If chance my penetrating eye
His glitt'ring neat buffet descry,
A goodly symptom ! and behold
His well scour'd knocker shine like Gold,
Look all so pretty and inviting,
I make no scruple of alighting ;
At said Attorney's fix my quarters,
Flatter and flirt with all his Daughters,
With KITTY FERRET dance Cotillions—
While you, ye worthy rum Civilians,
Ye sober, persevering Stagers,
Hammer your ³*minors* and your *majors*,

³ *Minors*—The *Major* Excommunication separates those on whom it is inflicted, not only from the Mystical Body of the Church, and from Spiritual Communion, but also from the society of the faithful: the *Minor*, or lesser Excommunication separates only from the passive Communion or receiving of the sacrament.—These may be inflicted by

And lapt in ſmoke, and vapours dank,
Pore over LINDWOOD and LANFRANC.—

But ſoft awhile, methinks Dear JOB,
Our Brethren of the Scarlet Robe,
Lull'd by the muſic of my numbers,
Seem to reſume their wonted Slumbers ;
Good MERCURY, with caution tread,
And MORPHEUS wave thy Wand of Lead ;
While they enjoy their meditations,
We 'ſcape their Excommunications.
Meanwhile do thou the *'Tale declare*,
Meet weapons of offence prepare,
Open your budget of Reſources,
Muſter your powers, collect your forces,

ſentence of the Eccleſiaſtical Judge—Vid. *Lindwood de Senten. Excom. C. Ult. Gloſs. Weſembery and Lanfranc*—
Authorities greatly relied on in matters of ſpiritual Cognizance, and the praſtice of the Eccleſiaſtical Courts.

⁴ Tale—The Tale or Narration contains the Story of the Plaintiff's Caſe, and is more commonly called the *Declaration*.

The Truth, and all the Truth, discover,
And add such flourishes moreover,
Such aggravations, and additions,
Embellishments, and repetitions,
As youthful Fancy oft begets
On some young SPECIAL PLEADER'S wits,
Which serve like notes of Commentators,
Or speeches of confus'd Debaters,
To puzzle e'en by Explanation,
And darken by Elucidation,
For puzz'ling oft becomes your duty,
And makes Obscurity a beauty;
And trust me 'tis of wond'rous use
By Nonsense to improve Abuse,
As I, thank Heaven, so oft have done,
And worthily my Race have run.

Then let us pray for writ of ^s PONE,
JOHN DOE and RICHARD ROE his Crony,

^s PONE—The PONE is the Writ of *Attachment* before mentioned, it is so called from the words of the Writ,

Good men, and true, who never fail
 The needy and distress'd to bail,
 Direct unseen the dire dispute,
 And pledge their names in ev'ry suit—
 Sure 'tis not all a vain delusion,
 Romance, and fable 'Rosicrucian,
 That spirits do exist *without*,
 Haunt us, and watch our *whereabout*;
 Witness ye visionary pair,
 Ye floating forms that light as air,
 Dwell in some SPECIAL PLEADER's brain;
 Am I deceived? or are ye twain
 The restless and perturbed Sprites
 The manes of departed Knights,
 Erst of the Post? whose frauds and lies
 False Pleas, false Oaths, and *Alibis*

*Pone per vadium & salvos plegios, "Put by Gage and safe
 Pledges, A. B."*

John Doe and Richard Roe.

⁶ *Rosicrucian*—For an account of the Theory of the Rosicrucian system, see Pope's Rape of the Lock.

Rais'd ye in Life above your Peers,
And launch'd ye tow'rds the starry Spheres,
Then to those mansions "unanneal'd,"
Where unrepented sins are seal'd :
Say, wherefore in your days of flesh
Cut off, while yet your sins were fresh,
Ye visit thus the realms of Day,
Shaking with fear our frames of Clay,
Still doom'd in penal Ink to linger,
And hover round a Pleader's finger,
Or on a Writ impal'd, and wedg'd,
For Plaintiff's Prosecution pledg'd,
Aid and abett the purpos'd ill,
And works of Enmity fulfil,
Sill doom'd to hitch in Declaration,
And drive your ancient Occupation ?
While thus to you I raise my Voice,
Methinks I see the Ghosts rejoice
Of Lawyers erst in Fiction bold,
LEVINZ, and LUTWYCHE, Pleaders old,
With Writs and Entries round him spread,
See plodding SAUNDERS rears his head,

Lo! VENTRIS wakes! before mine eyes
BROWN, LILLY, and BOHUN arise,
Each in his Parchment shroud appears,
Some with their Quills behind their ears,
Flourish their velvet Caps on high,
Some wave their grizzel wigs, and cry
Hail happy Pair! the Glory, and the Boast,
The Strength and Bulwark of the legal Host,
Like ' SAUL and JONATHAN in Friendship
tried,
Pleasant ye lived, and undivided died!
While Pillories shall yawn, where erst ye stood,
And brav'd the torrent of o'erwhelming mud,
While gaming Peers, and ' Dames of noble
Race,
Shall strive to merit that exalted Place;

⁷ *Saul*—"Saul and Jonathan were pleasant in their Lives,
and in their Death they were not divided," 2d *Samuel*,
c. 1. v. 23.

⁸ *Dames*—Mr. SURREBUTTER in this passage seems to
have contemplated the probability of certain Characters of
both Sexes in the fashionable World, exhibiting their Per-

While righteous Scriv'ners, who when Sun-
day shines,
Pore o'er their Bills, and turn their noughts
to nines,
(Their unpaid Bills, which long have
learn'd to grow
Faster than Poplars on the banks of Po),
Freely shall lend their charitable aid,
To young Professors of the gambling trade;
While Writs shall last, and Usury shall thrive,
• Your name, your honor, and your praise
shall live:

• Semper honos, nomenque tuum, laudesque manebunt.

VIRG.

sons in the Pillory for keeping public Gaming Tables. It is written in the true Spirit of Prophecy, and from a late Declaration of a learned and noble Judge, (no less distinguished for his impartial and independent Spirit, than for his great zeal and earnestness for Justice) the EDITOR very sincerely hopes Mr. SURREBUTTER'S Prophecy will be shortly fulfilled.

Jailers shall smile, and with Bumbailiffs
raise

Their iron voices to record your Praise,
Whom Law united, nor the Grave can sever,
" All hail JOHN DOE, and RICHARD ROE
for ever."

Edw. R. W.

END OF THE FIRST BOOK.

Whom I am united, and the Chinese level

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